IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 297 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHANTILAL NAGINDAS MANJURAWALA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 297 of 2004

MR NM KAPADIA for Petitioners.

MR HM PRACHCHHAK, LD. APP for Respondent.

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/07/2004

ORAL JUDGEMENT

Heard learned counsel appearing for the parties.

The petitioner nos.1 and 2 are the father-in-law and mother-in-law of the deceased Yogeshbhai. The petitioner no.3 is the maternal aunt of Yogita-wife of the deceased Yogesh and the petitioner no.4 is the first cousin of

Yogita and son of petitioner no.3. The petitioner no.5 is the first cousin of Yogita (uncle's son). The petitioner no.6 is the brother-in-law of the deceased Yogesh.

2. The petitioners have been chargesheeted for the offence punishable under Sections 306, 384, 506(2) r/w. Section 34 of the Indian Penal Code. After filing chargesheet and on committal of the case, the petitioners-accused approached the learned Sessions Judge, Surat with an application under Section 227 of the Criminal Procedure Code (hereinafter referred to as 'the Code') praying for discharge vide application Exh.7. The order rejecting the discharge application dated 22nd April, 2004 is under challenge in the present Revision Application.

3. To appreciate the rival contentions, it is necessary to state certain facts in brief. The petitioners-accused have been chargesheeted after investigation of a complaint registered before the Katargam Police Station vide C.R. No.I-52/99 on a complaint filed by Tansukhbhai Mohanlal Randeri-father of the deceased Yogesh. In the complaint, mostly he has narrated the details of the facts that had occurred on 21st, 22nd and 23rd January, 1999. It is contended in the complaint that the deceased Yogesh had left informing the family members that as he has to attend one function-a dinner hosted by his friend, he would return at about 8-00 p.m. But as he had not returned in time, the brother of the deceased Yogesh and other family members had started search but ultimately, he was not found. On the next day morning, Naresh-brother of deceased Yogesh had opened the cupboard of deceased Yogesh and found one writing in the style of a will and one application addressed to the Police Commissioner. In view of the contents of both these documents written on a stamp paper of Rs.20/- each, Nareshchandra went to Katargam Police Station where he got information from Hiteshbhai Dhirubhai Desai that one scooter bearing registration No.GJ-5-R-8792 and a dead body of a person are lying near Amroli Bridge. Nareshbhai was knowing the registration number of the scooter of his brother, so he went to the site where he found his brother dead. From the body of the deceased Yogesh, one chit and certain tablets were also recovered and it was inferable that the deceased Yogesh must have committed suicide. It is the say of the prosecution that the daughter of petitioner nos.1 and 2-Yogita, had died before three months and she was suffering from Cancer. It is on record that there was some dispute between the in-laws of the deceased as

to the personal savings, Fixed Deposits and other investments of Yogita-wife of the deceased Yogesh. The allegation in the complaint is that it was the wish of the deceased Yogita that her entire property should go to her minor daughter, whom she had delivered in the year 1997 and the deceased Yogesh was afraid that the petitioners-accused and especially petitioner nos.1, 2 and 6 may usurp or misappropriate the personal savings of his wife Yogita and they shall not keep anything for his minor daughter Sneha. Obviously, Yogesh being class-I heir, it seems that he was in a mood to retain the entire sum, of course, in the interest of minor daughter Sneha. Therefore, it is alleged that all the petitioners-accused were torturing deceased Yogesh and they were giving threats for the very purpose. According to prosecution, as the deceased Yogesh was not able to resist the mental torture and knowing that the intention of the petitioners-accused is to grab the amount of his deceased wife Yogita, he committed suicide. The deceased Yogita was serving as a teacher and, therefore, she was able to save some substantial amount and she had a life insurance policy, which is in the papers of investigation. That Yogita had executed a will prior to her death and the same is notarized. It is very likely that the deceased Yogesh might have been put to the notice about the execution of a will by Yogita. There are allegations and explanations from both the sides on the facts emerging from record.

4. The backbone of the arguments of prosecution before the lower Court and also before this Court is based on a chit recovered from the pocket of the shirt of the deceased Yogesh, which bears certain allegations against the accused persons. However, it was submitted before the learned Additional Sessions Judge that even for the sake of argument the facts alleged are accepted to be true, even then the accused could not have been chargesheeted for the offence punishable under Section 306 because the alleged conduct of the petitioners-accused or any of them cannot be said to be an act of abetment within the meaning of Section 107 of the Indian Penal Code. The application for discharge preferred before the learned trial Court is a detailed application and Section 107 of the Indian Penal Code has been quoted and certain decisions have also been referred to in the application. However, the learned Additional Sessions Judge has rejected the application observing mainly that the say of the petitioners can be appreciated well while evaluating the evidence on merits and as strong suspicion is emerging from the papers of investigation; especially the chit recovered from the

pocket of the shirt of the deceased Yogesh, and so it would not be appropriate to discharge the petitioners-accused. The strong suspicion is sufficient to frame at least the charge against the petitioners-accused.

5. Mr. Kapadia, learned counsel appearing for the petitioners-accused, has taken me through the allegations of prosecution against the present petitioners and other aspects emerging from the papers of investigation. It is on record that from the document recovered from the cupboard by the real brother of the deceased, it reveals that the deceased Yogesh did not want to attribute allegations against anybody for his contemplated action and the chit recovered from the pocket of the shirt of the deceased reveals a different story. However, the insistence to retain entire savings of Yogita in the interest of minor daughter Sneha by the maternal grand parents cannot be said to be totally unjustified. It would not be correct to say that such conduct can be said to be a conduct of abetment within the meaning of Section 107 of the Indian Penal Code. It is not necessary to reproduce Section 107 of the Indian Penal Code. It is apparent that the act of committing suicide by the deceased Yogesh may be because he was ignored by his wife or his expectations to have some share in the property of deceased Yogita had not turned and the entrustment of the entire property to his mother-in-law by his wife Yogita might have left him to a great frustration or disappointment. Certain conduct or act of petitioners -accused even if it becomes inconvenient to the deceased cannot be equated to cruel behaviour or torture. The day on which Yogesh committed suicide, minor daughter was undisputedly with the petitioners-accused i.e. family of his deceased wife Yogita. So more than one possibility is emerging from the circumstances under which the deceased Yogesh might have thrown himself to a great disappointment or frustration. The learned Additional Sessions Judge while dealing with the application for discharge has ignored very relevant material aspect, factual as well as legal. It is rightly argued by Mr. Kapadia that the ratio of the decision in the case of Sanju @ Sanjay Singh Sengar v. State of M.P., reported in (2002) 5 SCC 371, can be applied to the facts of this case, wherein the Apex Court has turned down the prosecution against the brother-in-law of the deceased where the appellant was prosecuted for abetting the suicide committed by his sister's husband. In the cited decision, it was evidently clear that there was a quarrel between the appellant and the deceased and when the appellant was said to have told the deceased, "to go and

die". The appellant was named in the suicidal note. However, it was specifically pleaded that the suicide was not a direct result of the quarrel or the abusive language used by the appellant or the above said words cited by the appellant. It was on record that the alleged quarrel had taken place on 25th July, 1998 when the deceased had gone to bring his wife back from his in-laws house and he was insulted and thereafter, he had committed suicide on 27th July, 1998 i.e. on the third day of the incident. In the present case, if the sequence of the event emerging from the papers of investigation is seen, it is clear that after several days from the date of the death of Yogita, wife of the deceased Yogesh, Yogesh committed suicide. Both the families including the deceased must have entered into a discussion to work out the disposal and arrangement of the property of the deceased Yogita. The approach of the petitioners even if would not have been liked by the deceased, such approach or say obstante stand taken by the petitioners or any of them, therefore, cannot be said to be a conduct or act of abetment within the meaning of Section 107 of the Indian Penal Code. There must be some material on record to show that the ingredients of the offence of the abetment are satisfied. Merely because an adverse suicidal note is found, that by itself would not give rise to frame a charge of the abetment to suicide against the petitioners-accused. The Delhi High Court in the case of Hira Lal Jain v. State, reported in 2001 Cr.L.J. 1212, has observed that :

"5. From the reading of the clause 'firstly' of S.107 of the Indian Penal Code, it is clear that a person who instigates another to do a thing, abets him to do that thing. A person is said to instigate another when he goads, provokes, incites, urges forward or encourage another to commit a crime. A serious question that has arisen in this case is whether there is any material suggesting that the petitioner had incited the deceased to commit suicide ? The fact that a suicide note was recovered and from the contents thereof it certainly cannot be said that the petitioner had goaded, provoked, incited, urged or encouraged the deceased to commit suicide. There being no material on record to show that the ingredients of the offence of abetment have been satisfied the framing of charge under S. 306 of the Indian Penal Code against the petitioner was bad in law.

6. For the reasons stated above, I find that there is no material on record for framing of charge under S.306 of the Indian penal Code against the petitioner. Consequently, I allow the Criminal Revision Petition No.274 of 2000 and quash the order of the Additional Sessions Judge dated 19-4-2000."

6. The main allegation in the complaint lodged by the father of the deceased was that his son Yogesh was apprehending that his minor daughter may not get anything and the in-laws of the deceased Yogesh will either misappropriate or misuse the fund/property earned or saved by his wife-Yogita. This allegation cannot be said to be, in the eye of law, sufficient to frame the charge of abetment and, therefore, the learned Additional Sessions Judge ought to have allowed the application. Moral conviction of a Judge on the set of facts pleaded by the prosecution has no role to play for framing of the charge, and on element of constitution of an offence punishable under Indian Penal Code or any special statute must emerge from the papers of investigation. The accepted proposition of law that if the accused does not enter into any type of defence and even do not cross-examine any witness named in the chargesheet, even then when it is not found possible to link the accused with the crime, in that case, the process of framing of charge which is a judicial process and not a mechanical one, ought not have been restored.

7. It would be beneficial to quote Section 384 of the Indian Penal Code, which is as under :

"384. Punishment for extortion : Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The facts of the present case do not attract this charge and there is neither any direct evidence nor the Investigating Agency has collected any convincing evidence, whereby the petitioners-accused can be said to have committed an offence punishable under Section 506(2) of the Indian Penal Code.

For short, this Revision Application is allowed. The order dated 22nd April, 2004, passed by the learned Additional Sessions Judge, 6th Fast Track Court, Surat, in Criminal Case No.76/2000 registered on the strength of C.R. No.I-52/1999, rejecting the application exh.7 for

discharge is hereby quashed and set aside and all the petitioners-orig. accused of Criminal Case No.76/2000 (registered with Katargam Police Station vide C.R. No.I-52/99) are hereby discharged and consequently, they are acquitted of the offences with which they are charged. Thus, the petitioners-accused are hereby discharged from all the charges levelled against them. Rule is hereby made absolute accordingly. Bail bonds, if executed, shall stand discharged.

(C.K. Buch, J)

Aakar